

SPEECHES & TESTIMONY

Statement of the Commission

August 15, 2019

Today the U.S. District Court for the Northern District of Illinois entered a Consent Order approved by the Commission that settles the CFTC v. Kraft litigation. We are pleased to bring this matter to a successful resolution, which terminates more than four years of litigation. The Consent Order results in a \$16 million civil monetary penalty—nearly three times the unlawful profit the Commission alleged the Defendants obtained—and a permanent injunction prohibiting the Defendants from engaging in future violations of several anti-manipulation provisions of the Commodity Exchange Act and Commission Regulations.

The Commission believes that the Consent Order advances our mission of fostering open, transparent, and competitive markets. In unanimously approving the settlement, our Commission considered carefully Paragraph 8 of Section I of the Consent Order, which was included at the Court's request:

“Neither party shall make any public statement about this case other than to refer to the terms of this settlement agreement or public documents filed in this case, except any party may take any lawful position in any legal proceedings, testimony or by court order.”

Our decision to approve the Consent Order was based on the fact that while this provision (hereinafter, “Paragraph 8”) limits what the Commission (i.e., the “party” referenced in Paragraph 8) can say about the Kraft litigation, it does not restrict individual Commissioners when speaking in their personal capacities.^[1] The text of Paragraph 8 could not be clearer: it binds the acts of a “party,” namely the Commission as plaintiff, and Kraft Foods Group, Inc. and Mondelēz Global LLC as defendants. While other provisions—such as Section IV, Paragraph 10—do apply beyond the parties, specific language in the Consent Order makes it so.

We do not expect the Commission to agree to similar language in the future, except in limited situations where our statutory enforcement mission of preventing market manipulation is substantially advanced by the settlement terms and the public's right to know about Commission actions is not impaired.

^[1] To be sure, in binding the Commission, Paragraph 8 includes any member of our agency's staff when they act on our behalf or speak for the CFTC.